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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,135	01/27/2001	Stephen D. Messer	056257-5002	6726
9629 7590 05/29/2008 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER LE, KHANH H				
ART UNIT 3688		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/771,135

Applicant(s)

MESSER ET AL.

Examiner

KHANH H. LE

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date: _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is responsive to the amendment filed 10/04/2007 which has been entered. Claim 51 was pending and now amended. New dependent claims 52-56 are added.

Claim Rejections - 35 USC § 112 (second paragraph)

2a. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2b. Claim 51-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention

Claim 51:

- 1) the first and second sites are not claimed to generate the http commands indicating referral activity for the clearinghouse (CH) to receive and parse. The generation step must be positively recited.
- 2) affiliate data is not recited as positively generated by the CH so that the merchant can receive it therefrom. The generation step at the CH must be positively recited.
- 3) it is not clear if the "information indicating said first and second affiliates" received by the merchant from the CH is the same as the http commands. If it is, it lacks clear antecedent basis.

Appropriate correction is required.

Claims 52-56 are rejected as dependents of claim 51.

2c. Previous remarks as to claim 51 under 35 USC § 112 (second paragraph) are withdrawn in view of the amendment.

Claim Rejections - 35 USC § 112 (first paragraph)

3. Previous Rejection of Claim 51 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn.

Support for the amended claims are found in Paragraphs [0014] and [0018], and [0041], and Figure 7 (as pointed out by Applicant) of the specification and support for parsing is found in the inventor's patents incorporated by reference.

See e.g. [0014] (relevant portions with emphasis added)

Again, generally speaking, and without intending to be limiting, another aspect of the invention relates to a method of tracking commissions earned by primary referrals to, and secondary referrals among, a group of e-commerce merchants, the method comprising: providing a plurality of network-accessible primary referral links configured to direct network-connected users from a source outside the group of e-commerce merchants to selected ones of the e-commerce merchants in the group of e-commerce merchants, each of the primary referral links including a primary referral source identifier that identifies the source of the primary referral link; providing a plurality of network-accessible secondary referral links configured to direct network-connected users from e-commerce merchants in the group of e-commerce merchants to other e-commerce merchants in the group of e-commerce merchants, each of the secondary referral links including a secondary referral source identifier that identifies the source of the secondary referral link; and, in response to a network-connected user's engagement of a

*secondary referral link to navigate from a first e-commerce merchant in the group of e-commerce merchants to second e-commerce merchant in the group of e-commerce merchants, storing primary and secondary source identifiers associated with any primary and secondary referral links utilized by the user to reach the first e-commerce merchant. Storing primary and secondary source identifiers associated with any primary and secondary referral links utilized by the user to reach the first e-commerce merchant may involve embedding primary and secondary source identifiers associated with any primary and secondary referral links utilized by the user to reach the first e-commerce merchant in a navigational link utilized to direct the user to the second e-commerce merchant, **directing the user from the first e-commerce merchant to the second e-commerce merchant through a clearinghouse server and storing, at the clearinghouse server, primary and secondary source identifiers associated with any primary and secondary referral links** utilized by the user to reach the first e-commerce merchant, **and/or sending a message to a clearinghouse server containing the primary and secondary source identifiers associated with any primary and secondary referral links utilized by the user to reach the first e-commerce merchant.***

[0041] Referring now to FIG. 7, another alternative referral tracking mechanism involves the transmission of referral tracking messages 71a, 72a, 73a to a clearinghouse server 51. Thus, for example, when a user engages primary referral link 71 to navigate from web page 4 to merchant 1, a message 71a is sent to clearinghouse server 51 confirming that said user has navigated from id "W1" to id "M1." Such messages may be sent by the referral source, destination, or appropriate system software. Upon a user's purchase of goods or services from merchant 1 in response to referral link 73, clearinghouse server 51 utilizes information received in messages 71a-73a to determine appropriate commission distributions between primary and secondary referral sources.

Response to Arguments as to Prior Art

4. Applicant's arguments have been fully considered but they are not persuasive. The previous rejection under *35 USC § 102 (e)* is withdrawn. New ground of rejection is presented below with responses to arguments included therein.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 51-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoyt et al, US 2001, 0034646A1, in view of Landau et al., US 6804,9660 B2, herein Landau.**

Claim 51:

Hoyt discloses:

A data processing system for supporting web-based commerce and commission tracking on a multi-node network (abstract; (Figure 1; [0042]-[0046]:affiliates member registration, referral reimbursement linking, advertising, searching options)

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comprising:

a first affiliate website operated by a first affiliate server, the first affiliate server operable to generate the first: affiliate website for displaying data comprising promotions and a plurality of other information on one or more web pages associated with the first affiliate website (Fig 1 item 150 and associated text) ;

a second affiliate website operated by a second affiliate server, the second affiliate server operable to generate the second affiliate website for displaying data comprising promotions and a plurality of other information on one or more web pages associated with the second affiliate website (Fig 1 item 140 or 150 and associated text) ;

a clearinghouse server in direct communication with each of said first and second affiliate servers sites (Fig 1 item 190 and associated text: RLS central server),, said clearinghouse server operable to parse HTTP commands data received from each of said first and second affiliate websites,

([0065] : discussion of known tracking technology in conjunction with [0031] [0032] [0046] describing affiliate Url identifiers, JavaScript etc.. are interpreted as reading on parsing HTTP commands data received from first and second affiliate websites,

[0065] The host site may employ a number of methods to verify if the user came from an RLS Member web site; however, none of these methods require a change in the user's browser nor a change in the user's browsing methods. For example, it is well known in the art that it is possible to obtain information about the referring web site when a user clicks through to the new web site. It is also known in the art that technology exists for determining what web site (IP address) the user came from and cross-referencing that web site with a list of web sites (list of member IP addresses) that are members of the RLS system; thus determining whether the user did or did not come from a member web site. The RLS host web server, through standard web serving technology, recognizes

the primary domain name of the referring web site and communicates that name to the RLS central repository, The RLS central repository will return information to the RLS host site as to whether the referring site is a registered RLS member, and if such, where to locate the logo to display, whether an instant referral commission affiliation is to be formed, etc. See e.g., U.S. Pat. No. 6,009,410, Method And System For Presenting Customized Advertising To A User In The World Wide Web, and U.S. Pat. No. 5,948,061, Method Of Delivery, Targeting, And Measuring Advertising Over Networks, incorporated by reference. In addition, step 410 can use well known technology to determine if the user had ever before visited this web site from a member web site.

(As to direct communication of affiliate 1 and 2, to server, Applicant argue “there is no description of communications between the first referring website and the central server.”

However, Hoyt discloses

[0067] Throughout the process of browsing on the RLS enabled web site, the clicks, purchases, and/or other actions of the user can be identified and recorded and information from that session may be transferred to a database where historical and demographical information may be recorded for further use. It is understood that information transferred to the database may be transferred either by a batch process or in real time. It is also understood that although this process of saving demographic and historical information to a database is identified as step 450, this process may take place at any time while the user is browsing on the RLS enabled web site, or after the user has left the RLS enabled web site. Step 450 may also take place at multiple points in time depending on the data to be transferred to or from the database. This demographic and historical information can be accessed by members for purposes such as, for example, marketing research and to evaluate the success of a web page's set up. This information may also be accessed by users as a search tool making known to the user how other users were referred to that host site.

Thus Hoyt discloses direct communication between the RLS sites (affiliates) and the central server at any point of user browsing in real time if desired.)

Hoyt also discloses, at [0047], a history demographics/ database at the central server 190 which receives *“the historical/demographical information from client interaction with RLS sites. Such RLS sites send information about the user to the RLS database in real time.”*
(The “RLS sites” are the equivalent of the claimed affiliate 1, affiliate 2 and/or the merchant.)

Applicant argued that *“Thus, according to claim 51, the clearinghouse is in communication with an affiliate server and receives information regarding referral activity. This is important because at a transaction point on a merchant website, according to claim 51, the merchant website will “obtain information indicating each of said first and second affiliate websites from said clearinghouse server” as well as “submit information to said clearinghouse server relating to affiliate referral activity on said merchant website.”*

However, Hoyt,(see excerpt below) , disclose exactly such a central server to store referral activities in real time and the referral information is accessible by the merchant.

Hoyt [0047], relevant portions in bold:

*“[0047] The RLS central server 190 in another embodiment includes the RLS history/demographics database. ... The RLS history/demographics database is also accessed by members to view data about the traffic at their web site (150 or 160). **Information available includes information about the amount of time users 105 were at their web site (150 or 160), what time they visited, how much time was spent on each page of a web site, where they came***

from, the success of advertisements being displayed, what types of advertisements were the most effective, where the users 105 went to, what the users 105 did while they were at their web site, whether the users 105 purchased anything, how much they spent while at their web site and any other desired information. Those familiar in the art of web page programming will understand that many other types of information may be tracked. The RLS database receives the historical/demographical information from client interaction with RLS sites. Such RLS sites send information about the user to the RLS database in real time. See, e.g. U.S. Pat. No. 6,009,410, Method and System For Presenting customized advertising to a user on the World Wide Web, and U.S. Pat. No. 5,855,008, Attention Brokerage, incorporated by reference.

Hoyt also discloses:

a merchant server operable to generate a merchant website and operable to process an electronic transaction via said merchant website, the merchant server in communication with said clearinghouse server (Fig 1 item 150 and associated text),

wherein said merchant server site is operable to obtain, from said clearinghouse server information, indicating each of said first and second affiliate websites (interpreted as the central server giving information to merchant as to fees due the affiliates: inherent in system, see e.g. last sentence of abstract) and

said merchant server site is operable to submit information to said clearinghouse server relating to affiliate referral activity on said merchant website (Fig 3, especially items 470 , 480 and associated text; see [0068]);;

wherein said clearinghouse server is operable to assign compensation to both said first affiliate and said second affiliate website (see [0046]; central server database containing all

members profile data for easy centralized updates; **see [0068], Fig 3 items 470,480 and associated text)** in response to (i) a network-connected user's use of a primary referral link provided by said first affiliate site to reach said second affiliate site; (ii) said user's use of a secondary referral link provided by said second affiliate site to reach said merchant site; and (iii) said user's completion of a transaction with said merchant site (Fig 3, especially items 470 , 480 and associated text; see paragraphs [0056], [0066] as to serial referrals; see [0002] , [0009]; [0011], [0030], [0035], [0037],],[0042], [0070] as to referrals tracking and compensation) .

see e.g. Hoyt, excerpt:

*[0068] The user continues browsing the pages of the member's web site (Step 460). **If a purchase is made (Step 470), a host site communicates that fact and relevant information to the RLS central repository where a determination is made as to whether or not a fee is owed to the referring web site as a commission for the referral. This information is determined by referring to the member's profile and the selections regarding the Instant Affiliates and referral fees (Step 480). After the information is recorded regarding the payment of a commission to a referring web site, the user may continue browsing the pages of the member's web site, or alternatively, may be taken to a screen as specified by RLS preferences selected by the member web site or the referring member web site which may show a message thanking the user for the purchase or some other similar message. In an alternative embodiment, the crediting of sales may extend to both a first and a second referring member and according to terms defined in the RLS central server database.***

Hoyt does not specifically disclose “said HTTP commands data including an affiliate field comprising one or more subvariables indicating referral activity”.

However, as discussed earlier during prosecution , LANDAU discloses a network of affiliates providing a first link on an affiliate site (e.g. fred.com) to reach a first e-site (CD Merchant.com) , then the first e-site providing a second link to reach a second e-site (e.g.

MusicMemorabilia.com) (see at least Fig. 7 and associated text ; col. 15 lines 66 to col. 20 line 2: for example, referring to the discussion in cols. 17-18).

Landau discloses “**HTTP commands data including an affiliate field comprising one or more subvariables indicating referral activity**” (e.g. LANDAU discloses embedding primary (fred) and secondary source identifiers (CD Merchant) associated with any primary and secondary referral links used by the user to reach a first e-site in a navigational link used to reach the 2nd e-site , col. 18 lines 9-10; also see col. 17 lines 20 , 30).

Thus it would have been obvious to a person having ordinary skill in the art at the time the invention was made (herein a “PHOSITA”) to add the Http commands including an affiliate field comprising one or more subvariables indicating referral activity to Hoyt to allow tracking of referrals.

Claim 52-53:

Hoyt discloses a system as in claim 51 above, and compensation of affiliates but does not disclose

wherein compensation is assigned to the first affiliate website and the second affiliate website in equal shares.

or

wherein compensation assigned to the first affiliate website comprises a majority portion of a commission associated with said user's completion of the electronic transaction, and compensation assigned to the second affiliate website comprises a minority portion of a commission associated with said user's completion of the electronic transaction.

However these compensation schemes are economic decisions to be agreed between the parties as desired. They may be dictated by market forces. These would have prompted change to the compensation system of Hoyt in a predictable way and thus would have been obvious. See

Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc., Federal Register / Vol. 72, No. 195 / Wednesday, October 10, 2007 Notices, <http://www.uspto.gov/web/offices/com/sol/notices/72fr57526.pdf> (herein "Guidelines"), Rationale F.

Claim 54-55:

Hoyt discloses a system as in claim 51 above and further discloses a database communicatively coupled to the clearinghouse server, the database operable to store data (see discussion of claim 51 above) .

The "data associated with the first affiliate website and the second affiliate website" and " data associated with compensation assigned to the first affiliate website and the second affiliate website" are non-functional descriptive material to which no patentable weight is given because the type of data does not impact the structure of the clearinghouse server. See MPEP 2106.

Since a database can store any type of data, it would have been obvious "data associated with the first affiliate website and the second affiliate website" and " data associated with compensation assigned to the first affiliate website and the second affiliate website could be stored if desired.

Further note that Hoyt discloses "data associated with the first affiliate website and the second affiliate website" ,e.g. member profiles (see discussion of claim 51 above).

Claim 56:

Hoyt discloses a system as in claim 51 above but does not disclose said clearinghouse server recommending said first affiliate website or said second affiliate to said user upon completion of the electronic transaction. However, a message of recommendation is non-functional descriptive material to which no patentable weight is given because the type of data does not impact the structure of the clearinghouse server. See MPEP 2106.

Further it is only claimed that the server be “operable to recommend”. Since the Hoyt server is in contact with the user, it is operable to send any message, e.g. by email , including a recommendation email of the 1st and second affiliate.

Further, if there are market forces or incentives dictating recommending the 1st and second affiliate to the user, it would have been obvious to a PHOSITA to add such message to the server system of Hoyt to carry out the intended marketing goal. The implementation would have been predictable thus obvious. See KSR Guidelines above, Rationale F.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Tuesday-Wednesday 9:00-6:00.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James W. Myhre can be reached on 571-272-6722. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating

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to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314). Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Khanh H. Le/
Examiner, Art Unit 3688
May 27, 2008

/James W Myhre/
Supervisory Patent Examiner, Art Unit 3688